



Broadcasting Decision CRTC 2007-37

Ottawa, 29 January 2007

Harmony Broadcasting Corporation
Winnipeg, Manitoba

Public Hearing at Winnipeg, Manitoba
29 September 2006

CJWV-FM Winnipeg – Issuance of mandatory orders

In this decision, the Commission issues mandatory orders directing the licensee to comply at all times with the requirements set out in sections 2.2(8), 8 and 9 of the Radio Regulations, 1986 (the Regulations), regarding the broadcast of Canadian music, the submission of logger tapes and other information, and to comply with the conditions of CJWV-FM's licence concerning the broadcast of news, music drawn from Category 3, and formal educational programming.

In addition, the Commission requires the licensee to, within 60 days of the publication of this decision, file reports related to the licensee's plans to ensure future compliance with the Regulations and with the Commission's policies, as well as compliance with the station's conditions of licence, and to file other documentation related to the operation of CJWV-FM. The licensee is also required to file further documentation on an annual basis.

Background

1. In *CJWV-FM Winnipeg – Licence renewal*, Broadcasting Decision CRTC 2004-340, 13 August 2004, the Commission renewed the broadcasting licence issued to Harmony Broadcasting Corporation (Harmony) for the instructional campus radio programming undertaking CJWV-FM Winnipeg, from 1 September 2004 to 31 August 2011.
2. In *Campus radio policy*, Public Notice CRTC 2000-12, 28 January 2000 (Public Notice 2000-12, Campus radio policy) the Commission stated that its primary objective for the campus radio sector is that it:

...provide programming differing in style and substance from that provided by other elements of the broadcasting system, particularly commercial stations and the Canadian Broadcasting Corporation (CBC). The Commission considers that campus stations should add diversity to the broadcasting system by providing alternative programming in both music and spoken word.

3. In Public Notice 2000-12, the Commission defined two different kinds of campus stations, namely Community-based campus stations and Instructional campus stations. Of the latter, the Commission stated:

The primary role of [Instructional campus] stations is to provide a training ground for students in broadcasting courses. These stations must also provide their audiences with alternative programming. Alternative programming should include music, especially Canadian music, not generally heard on commercial stations (including special interest music, as well as styles of popular music seldom broadcast), in-depth spoken word programming, and some formal educational programming.

4. In Public Notice 2000-12, the Commission also noted that it would expect the board of directors of all campus radio stations “to include balanced representation from among the student body, the associated college or university (for example, faculty or administration), station volunteers, and from the community at large. To ensure continuity of direction, the Commission also encourages campus stations to establish positions on their boards of directors with terms of more than one year.”
5. Since the renewal of CJWV-FM’s licence, the Commission received complaints with respect to the station’s operations. The Commission investigated the complaints, and in Broadcasting Notice of Public Hearing CRTC 2006-8, 1 August 2006, the Commission called Harmony to a public hearing in Winnipeg, Manitoba that would commence on 29 September 2006, to show cause why mandatory orders should not be issued, requiring the licensee to conform to the *Radio Regulations, 1986* (the Regulations) concerning logger tapes and Canadian content, as well as to conditions of CJWV-FM’s licence regarding the broadcasting of news, category 3 music, and formal educational programming.

Interventions

6. Two interventions were submitted with respect to this matter. The Canadian Association of Broadcasters (CAB) offered general comments in the context of this proceeding, and Mr. Martin Boroditsky submitted an intervention in opposition to the continued operation of CJWV-FM. Mr. Boroditsky also originated one of the complaints noted above.
7. The CAB was of the view that the musical format of CJWV-FM was not complementary to the musical formats offered by other licensees of radio stations serving Winnipeg, and that the station was not operating in compliance with the Campus radio policy. The CAB was of the view that the Commission should issue mandatory orders with respect to the non-compliance of CJWV-FM with both the Regulations and with conditions of the station’s licence.

8. Mr. Boroditsky accused Harmony of several irregularities and questionable practices in its operations, including the failure to comply with pertinent policies in the composition of its Board of Directors, in its association with a post-secondary educational institution, and in its failure to train or to use student labour.

Licensee's reply

9. In response to the CAB intervention, Harmony reiterated its position that it was offering complementary programming in Winnipeg, and asserted that CJWV-FM was operating in compliance with the Campus radio policy. Harmony admitted that, while at one time the station had been operating in non-compliance with the Regulations, those issues had since been addressed and the station was in full compliance.
10. At the hearing, in response to Mr. Boroditsky's intervention, the licensee indicated that the intervener was a former employee of Harmony who left the company's employ under unhappy circumstances.

Commission's analysis and determinations

Compliance

Submission of logger tapes

11. The submission of logger tapes as required under sections 8 and 9 of the Regulations is a basic and fundamental requirement of all radio stations regardless of the station's location or its type. Submission of logger tapes enables the Commission to conduct an analysis of a station's programming so as to verify compliance with the Regulations and with individual conditions of licence. The maintaining of logger tapes also enables the Commission to investigate a station's programming in the case of complaints.
12. In response to the complaints noted above, the Commission requested that Harmony supply logger tapes for the week of 17 to 23 April 2005, by 31 May 2005. Following several extensions of time in which to provide the tapes, the Commission informed the licensee that Harmony's failure to provide the requested material constituted a violation of section 8 of the Regulations. The licensee was again directed to submit the tapes for the week of 17 to 23 April 2005, and the information was received on 20 June 2005.
13. Following an analysis of the programming broadcast during the week of 17 to 23 April 2005 (discussed below), the Commission requested that Harmony submit CJWV-FM's logger tapes for the period 29 January 2006 to 4 February 2006. The licensee did not comply with that request.
14. At the hearing, the licensee admitted that it had breached section 8 of the Regulations by failing to supply logger tapes requested in a timely fashion, and for failing to supply logger tapes entirely. Harmony indicated that the paperwork involved in the submission of the logger tapes represented an increased work-load, and that the sole person responsible could not complete the submission in a timely fashion.

15. At the hearing, when asked if Harmony had a contingency plan in case of machine or software failures, the licensee indicated that it had "...discs with the appropriate amount of Canadian content and whatever other category 3 songs or music that is required."

Canadian musical selections drawn from category 2

16. Section 2.2(8) of the Regulations requires that campus radio stations ensure that at least 35% of all musical selections drawn from category 2 (General popular music) aired during each broadcast week be Canadian selections.
17. Analysis of the programming broadcast on CJWV-FM during the period 17 to 23 April 2005 revealed that 31% of all musical selections broadcast that week were Canadian selections.
18. At the hearing, the licensee admitted that it had breached section 2.2(8) of the Regulations by failing to broadcast 35% Canadian content during the week of 17 to 23 April 2005. The licensee indicated that it had dismissed the personnel responsible for the shortfall, and had taken measures to ensure that Canadian content levels would be maintained.

Conditions of licence

19. Conditions of licence with respect to the broadcast of news, category 3 music and formal educational programming are imposed on all campus instructional stations. Adherence to these conditions is intended to ensure that a range of alternative and complementary programming is provided, in order to distinguish campus instructional stations from commercial radio services.

News programming

20. The current licence for CJWV-FM contains a condition requiring the licensee to devote not less than 4% of each broadcast week to the broadcast of news programming.
21. Analysis of the programming broadcast on CJWV-FM during the period 17 to 23 April 2005 revealed that 0.83% of that broadcast week had been devoted to news programming.
22. At the hearing, the licensee agreed that the level of news in the broadcast week beginning 17 April 2005 had represented only 0.83% of the programming broadcast during that week. Harmony stated that it had not understood the Commission's definition of "news", which does not include sports or entertainment information. The licensee indicated that the inexperience of CJWV-FM's staff was responsible for the non-compliance in the past.

23. The licensee indicated that, going forward, a specific member of CJWV-FM's staff would be responsible for the gathering of news. News material would be gleaned from newspapers, the Internet and television. Newsworthy events taking place within range of the radio station would be covered in person.

Category 3 music

24. The current licence for CJWV-FM contains a condition requiring the licensee to devote not less than 5% of each broadcast week to the broadcast of category 3 (Special interest music).
25. Analysis of the programming broadcast on CJWV-FM during the period 17 to 23 April 2005 revealed that 4.73% of that broadcast week had been devoted to the broadcast of music drawn from category 3.
26. At the hearing, the licensee agreed that the level of category 3 music in the broadcast week beginning 17 April 2005 had been lower than that required under CJWV-FM's condition of licence.
27. Harmony indicated that it had instituted measures that would ensure the broadcast of a sufficient amount of Canadian music, including the preparation of backup material in case of machine or software failure, and again noted that the inexperience of the station's staff was the primary reason for the non-compliance. The licensee further stated that it currently devotes between 7% and 10% of each week to the broadcast of category 3 music.

Formal educational programming

28. The current licence for CJWV-FM contains a condition requiring the licensee to devote, during each broadcast week, at least two hours of its programming to formal educational programming that provides academic instruction.
29. Analysis of the programming broadcast on CJWV-FM during the period 17 to 23 April 2005 revealed that no formal educational programming was broadcast during that period.
30. The licensee admitted that no formal educational programming had been broadcast during the week beginning 17 April 2005.
31. The licensee indicated at the hearing that CJWV-FM had been in compliance with this condition of its licence since February 2006. Harmony stated that formal educational programming broadcast during the morning show "would be educational subjects geologists, naturalists, discussions about the environment, that type of thing."

Dealing with non-compliance

32. As noted above, a licensee's obligation to provide logger tapes when requested to do so is a basic and fundamental requirement of all radio stations. The Commission notes Harmony's proposed remedies for its non-compliance, but remains concerned that the proposals to remedy the situation seem to hold only one person responsible, and that no adequate formal procedures or contingency plans have been detailed.
33. With respect to the licensee's non-compliance with the regulatory requirement to broadcast Canadian music, the Commission notes the licensee's indication that it dismissed the persons responsible for the shortfall in Canadian selections revealed in the recent analysis of CJWV-FM's programming, and notes the licensee's statement that it has instituted voice tracking, which should eliminate the practice of announcers failing to play Canadian musical selections. At the same time, the Commission remains concerned that as noted above, no adequate formal procedures or plans related to the broadcast of Canadian music have been adopted to ensure that CJWV-FM would remain in compliance at all times.
34. With respect to Harmony's non-compliance with CJWV-FM's conditions of licence, the Commission notes that the conditions imposed on all campus instructional stations are intended to ensure that a range of alternative and complementary programming is offered, in order to distinguish campus instructional stations from commercial radio services. The Commission is of the view that the licensee does not recognize nor appreciate the importance of adhering to conditions related to the broadcast of news, Category 3 music and formal educational programming. The Commission is also concerned with the licensee's admission that the Board of Directors of CJWV-FM made a decision to operate the station as a commercial operation, so that any training would be offered in a commercial radio environment.
35. In addition, the Commission has serious concerns with the operation of CJWV-FM as an instructional campus radio station and its apparent failure to associate itself with an accredited broadcasting course at a post-secondary educational institution. In this regard, the Commission notes the licensee's admission that its original association with Winnipeg South Technical College was terminated in September 2004. The licensee indicated that CJWV-FM is now associated with the broadcasting program offered by Robertson College in Winnipeg.
36. The Commission also remains concerned with the composition of Harmony's Board of Directors. At the hearing, the licensee confirmed that the Board does not currently include any student representative, and admitted that the Board did not therefore meet the requirements of balanced representation amongst the student body, the college, station volunteers and the community at large, as expected by the Campus radio policy.

Conclusion

37. The Commission is of the view that Harmony Broadcasting Corporation's operation of CJWV-FM has focused on the station's music format and its commercial appeal. The Commission remains concerned with whether Harmony is capable of fulfilling the alternative programming mandate for an instructional campus station, beyond its use of a musical format focusing on Urban music. The Commission is especially concerned with the licensee's apparent reluctance to include students in the day-to-day operation of CJWV-FM, despite the intended fundamental role of an instructional campus radio station in the training of students for careers in broadcasting.
38. In light of the licensee's multiple infractions of the *Radio Regulations, 1986*, as well as breaches of its conditions of licence, the Commission considers it appropriate to issue mandatory orders pursuant to section 12(2) of the *Broadcasting Act* (the Act) requiring the licensee to comply at all times with the provisions of sections 2.2(8), 8 and 9 of the Regulations concerning the broadcast of Canadian musical selections drawn from category 2, the submission of logger tapes, and the submission of other information. The Commission also considers it appropriate to issue mandatory orders requiring Harmony to comply at all times with the conditions of CJWV-FM's licence concerning the broadcast of news, category 3 music and formal educational programming.
39. Consistent with section 13 of the Act, Broadcasting Mandatory Orders CRTC 2007-1, 2007-2, 2007-3, 2007-4, 2007-5 and 2007-6, as set out in the appendices to this decision, will be filed immediately with the Federal Court and become orders of the Federal Court. Failure to comply with Federal Court orders may result in resort to the compliance procedures of that Court.
40. The Commission notes that it may consider recourse to additional measures, including suspension, non-renewal or revocation of the licence, if Harmony again breaches the Regulations or any conditions of CJWV-FM's licence.
41. Further to the issuance of the Mandatory Orders set out in the appendices to this decision, the Commission requires the licensee to submit, within 60 days of the date of this decision, additional documentation that will serve to demonstrate the licensee's operation of CJWV-FM as an instructional campus radio station. The Commission also requires the licensee to submit annual reports related to the operation of CJWV-FM. The list of additional documentation required is set out in Appendix VII to this decision.

Secretary General

This decision is to be appended to the licence. It is available in alternative format upon request, and may also be examined in PDF format or in HTML at the following Internet site: <http://www.crtc.gc.ca>

Appendix I to Broadcasting Decision CRTC 2007-37

Broadcasting Mandatory Order CRTC 2007-1

Harmony Broadcasting Corporation, licensee for CJWV-FM Winnipeg, is hereby ordered, pursuant to subsection 12(2) of the *Broadcasting Act*, to comply at all times within the term of the licence granted in *CJWV-FM Winnipeg – Licence renewal*, Broadcasting Decision CRTC 2004-340, 13 August 2004, with the requirements contained in subsections 8(4), 8(5) and 8(6) of the *Radio Regulations, 1986*, which read as follows:

(4) A licensee shall furnish, to the Commission on request, its program log or machine readable record for any day, with a certificate by or on behalf of the licensee attesting to the accuracy of its content.

(5) A licensee shall retain a clear and intelligible tape recording or other exact copy of all matter broadcast

(a) for four weeks from the date of the broadcast; or

(b) where the Commission receives a complaint from any person regarding the matter broadcast or for any other reason wishes to investigate it and so notifies the licensee before the expiration of the period referred to in paragraph (a), for eight weeks from the date of the broadcast.

(6) Where, before the expiry of the applicable period referred to in subsection (5), the Commission requests from the licensee a clear and intelligible tape recording or other exact copy of matter broadcast, the licensee shall furnish it to the Commission forthwith.

Appendix II to Broadcasting Decision CRTC 2007-37

Broadcasting Mandatory Order CRTC 2007-2

Harmony Broadcasting Corporation, licensee for CJWV-FM Winnipeg, is hereby ordered, pursuant to subsection 12(2) of the *Broadcasting Act*, to comply at all times within the term of the licence granted in *CJWV-FM Winnipeg – Licence renewal*, Broadcasting Decision CRTC 2004-340, 13 August 2004, with the requirements contained in section 9 of the *Radio Regulations, 1986*, which read as follows:

9. (1) For the purposes of this section,

"Canadian musical selection" means a musical selection that meets the criteria set out in subsection 2.2(2); (pièce musicale canadienne)

"hit" has the meaning indicated on pages 19 to 22 of Public Notice CRTC 1986-248 of September 19, 1986 entitled Regulations Respecting Radio Broadcasting and published in the Canada Gazette Part I on October 4, 1986, as amended by page 23 of Public Notice CRTC 1990-111 of December 17, 1990 entitled An FM Policy for the Nineties and published in the Canada Gazette Part I on December 29, 1990. (grand succès)

(2) On or before November 30 of each year, a licensee shall submit to the Commission a statement of accounts, on the annual return of broadcasting licensee form, for the year ending on the previous August 31.

(3) At the request of the Commission, a licensee shall submit for any period specified by the Commission in its request

(a) the information required by the most recent Station Self-assessment Report form issued by the Commission; and

(b) a list of the musical selections in the order in which they are broadcast by the licensee during that period that includes the title and performer of each musical selection and a legend that identifies

(i) any Canadian musical selection,

(ii) any hit,

(iii) any instrumental selection,

- (iv) any content category 3 musical selection that is described in the appendix to Public Notice CRTC 2000-14 dated January 28, 2000 and entitled Revised Content Categories and Subcategories for Radio, published in the Canada Gazette Part I on February 5, 2000.
- (v) the language of the musical selection, where the musical selection is not an instrumental selection.

(4) At the request of the Commission, a licensee shall provide the Commission with a response to any inquiry regarding the licensee's programming, ownership or any other matter within the Commission's jurisdiction that relates to the licensee's undertaking.

Appendix III to Broadcasting Decision CRTC 2007-37

Broadcasting Mandatory Order CRTC 2007-3

Harmony Broadcasting Corporation, licensee for CJWV-FM Winnipeg, is hereby ordered, pursuant to subsection 12(2) of the *Broadcasting Act*, to comply at all times within the term of the licence granted in *CJWV-FM Winnipeg – Licence renewal*, Broadcasting Decision CRTC 2004-340, 13 August 2004, with the requirement contained in subsection 2.2(8) of the *Radio Regulations, 1986* to devote, in each broadcast week, 35% or more of its musical selections from content category 2 to Canadian selections broadcast in their entirety.

Appendix IV to Broadcasting Decision CRTC 2007-37

Broadcasting Mandatory Order CRTC 2007-4

Harmony Broadcasting Corporation, licensee for CJWV-FM Winnipeg, is hereby ordered, pursuant to subsection 12(2) of the *Broadcasting Act*, to comply at all times within the term of the licence granted in *CJWV-FM Winnipeg – Licence renewal*, Broadcasting Decision CRTC 2004-340, 13 August 2004, with the condition of its licence as set out below:

It is a condition of licence that the licensee devote, during each broadcast week, a minimum of 5% of its musical selections to musical selections from Special Interest Music (content category 3) as defined in Public Notice CRTC 2000-14, as amended from time to time.

Appendix V to Broadcasting Decision CRTC 2007-37

Broadcasting Mandatory Order CRTC 2007-5

Harmony Broadcasting Corporation, licensee for CJWV-FM Winnipeg, is hereby ordered, pursuant to subsection 12(2) of the *Broadcasting Act*, to comply at all times within the term of the licence granted in *CJWV-FM Winnipeg – Licence renewal*, Broadcasting Decision CRTC 2004-340, 13 August 2004, with the condition of its licence as set out below:

It is a condition of licence that the licensee devote at least 4% of its programming during each broadcast week, excluding vacation periods, to News (content subcategory 11) as defined in Public Notice CRTC 2000-14, as amended from time to time.

Appendix VI to Broadcasting Decision CRTC 2007-37

Broadcasting Mandatory Order CRTC 2007-6

Harmony Broadcasting Corporation, licensee for CJWV-FM Winnipeg, is hereby ordered, pursuant to subsection 12(2) of the *Broadcasting Act*, to comply at all times within the term of the licence granted in *CJWV-FM Winnipeg – Licence renewal*, Broadcasting Decision CRTC 2004-340, 13 August 2004, with the condition of its licence as set out below:

It is a condition of licence that the licensee devote, during each broadcast week, at least 2 hours of its programming to formal educational programming that provides academic instruction.

Appendix VII to Broadcasting Decision CRTC 2007-37

Additional documentation to be submitted by Harmony Broadcasting Corporation

Within 60 days of the date of this decision, the Commission requires Harmony Broadcasting Corporation to submit the following:

1. A report setting out the licensee's procedures and mechanisms to be put in place, so as to ensure the licensee's fulfilment of elements of the Campus radio policy concerning:
 - The nature of its alternative and complementary programming.
 - Its association with Robertson College or another post-secondary educational institution, including the nature of the curriculum to be offered, as well as the extent of student involvement and the responsibilities of students in the day-to-day activities of the station, including on-air activities.
 - A copy of the current association agreement between Harmony Broadcasting Corporation and Robertson College, or another post-secondary educational institution.
 - Measures taken or to be taken to ensure that the Board of Directors of Harmony Broadcasting Corporation remains in effective control at all times.
 - Measures taken to ensure that Harmony Broadcasting Corporation remains in compliance with the Campus radio policy at all times.
2. A report setting out the licensee's procedures and mechanisms to be put in place, so as to ensure the licensee's compliance with the following:
 - Section 2.2(8) of the *Radio Regulations, 1986* concerning the broadcast of Canadian musical selections,
 - Section 8 of the *Radio Regulations, 1986* concerning the provision of complete logger tapes,
 - Section 9 of the *Radio Regulations, 1986* concerning requests for information,

- The condition of licence with respect to the broadcast of music from Category 3,
 - The condition of licence with respect to the broadcast of news, and
 - The condition of licence with respect to the broadcast of formal educational programming.
3. The composition of the Board of Directors of Harmony Broadcasting Corporation and the term of office of each member, as of 30 January 2007, and including representation from the student body of Robertson College or another post-secondary educational institution, from station volunteers, and from the community at large, with accompanying Special Resolution and proof of filing same with the Manitoba Corporations Branch.
 4. A list of students, to be supplied in confidence, enrolled in the broadcasting course at Robertson College or at another post-secondary educational institution with which Harmony Broadcasting Corporation is associated, as of 30 January 2007.

In addition to the information listed above, the Commission requires that Harmony Broadcasting Corporation submit the following on an annual basis, commencing 30 September 2007:

- A report listing the names of the members of the Board of Directors as of 30 September of each year, with accompanying Special Resolution and proof of filing with the Manitoba Corporations Branch.
- A report, to be supplied in confidence, listing the names of students enrolled in the broadcasting course at Robertson College, or at another post-secondary educational institution with which Harmony Broadcasting Corporation is associated, as of 30 September of each year.
- Confirmation from the Manitoba provincial education authority, as of 30 September each year that the accredited educational institution with which Harmony Broadcasting Corporation is affiliated has an acceptable curriculum.
- A copy of the association agreement between Harmony Broadcasting Corporation and Robertson College, or another post-secondary educational institution, in effect as of the date of reporting.